

### **REMARKS/ARGUMENTS**

We have amended the claims to more particularly point out and distinctly claim the invention. For example, we have amended claims 1 and 31 to make more explicit what was implicit in the original wording. Rather than reciting "a network connection" or "the network connection," we have recited "a connection to the network" or "the connection to the network," respectively.

We have also added to new dependent claims, namely, claims 61 and 62 and have cancelled claims 58-60. After entering the amendments, claims 1-57, 61 and 62 will be pending in this application.

The Examiner rejected claims 1-3, 20, 22-25, 28-33, 50, 52-55, 58-60 under 35 U.S.C. §103(a) as being unpatentable over Phaal (U.S. 6,006,269) in view of Emens et al. (U.S. 6,934,735). The Examiner argues that Phaal discloses all of the elements of claim 1 except one. More specifically, the Examiner admits that "Phaal does not explicitly teach that the scheduler is client side." And to supply that which is missing, the Examiner relies on Emens, which supposedly teaches a client-side scheduler.

But we note there is more missing from Phaal than the Examiner appears to recognize. In particular, contrary to what the Examiner argues, Phaal does not disclose anything on the server side that is concerned with or determines the availability of a connection to the network. Rather the server side of the Phaal system is only concerned with the availability of the server resource.

In accordance with the principles of the present invention, the preferred admission control system normally admits messages to a server, but if processing resources of the server are strained, the admission control system defers messages corresponding to new sessions to a later time when it is thought that the server can guarantee processing of the deferred message as a priority message and any corresponding session. The admission control system formats a response to the client, to inform the client's user that access has been deferred, and accords the client a means of later obtaining access on a priority basis if the client contacts the server again at the proper time. (Emphasis Added) (Col. 4, lines 46-57).

As a consequence, in none of the components on server-side of Phaal's system is there any code for "registering a request entry while the network connection is unavailable" nor is there any code or device for "storing the request entry until a network connection is available for use by"

any entity. Indeed, any requests that are deferred for later implementation by Phaal's server are deferred while the connection to the network is available and they are stored until the server resource is available (not until a connection to the network is available). There is no hint in Phaal of offline operation, which is what the present invention is concerned with.

In addition to the deficiencies of the Phaal patent, we also note that, contrary to what the Examiner argues the Emens patent does not supply that which is missing from Phaal. In other words, even if one skilled in the art were to combine the teachings of Phaal and Emens, the result would not be the claimed invention.

We note that Emens "scheduler" does not operate by "storing the request entry until a connection to the network is available for use by the client-side code" nor does it operate by "notifying the client-side code that the connection to the network is available." Indeed, the scheduler in Emens is not aware of when a connection to the network is available. It simply determines when a good time (i.e., some delayed later time) to request a download might be. As noted in the Abstract,

A system for accepting a specification of a time interval during which a download is to be performed on a delayed basis is described. The system can also select a time within the specified period. The selection can be randomized with the aim of distributing the load placed on computer and communication resources, or the selection may be based on testing a number of measures of computer and communication resource availability, and selecting a time of low utilization. (Emphasis Added)

Thus, it is possible that when the Emens scheduler requests the download at the scheduled time the network will not be available. This is because the Emens scheduler has no awareness of whether a connection to the network is in fact available. It simply tries to schedule the download request at the later time which is more convenient and/or more likely to proceed efficiently. The Emens' system addresses the problems that Emens identified in his background:

What is needed is a system to overcome the problems of long download times and which automatically selects an optimum time to perform downloading.

What is further needed is a system by which a user may specify a window of time including an ending time by which a download needs to be performed. A system which selects an optimum time within the specified window for performing the download according to availability of client, server, and communication resources is also needed.

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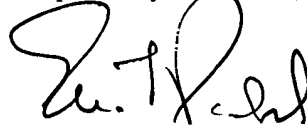
These problems have nothing to do with offline operation or detecting when online operation is achieved so requests can be sent to a server that is reachable over the network. So, it is not surprising that Emens does not disclose notifying a scheduler or any other entity when a connection to the network is available.

For the reasons stated above, we believe that the claims are allowable and therefore ask the Examiner to allow them to issue.

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